

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
AT MARTINSBURG**

**JERRY LEE HESS, JR.,**

**Petitioner,**

**v.**

**CIVIL ACTION NO. 3:05CV136  
(BROADWATER)**

**WARDEN THOMAS MCBRIDE,**

**Respondent.**

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge James E. Seibert, dated August 22, 2006. Neither Party filed objections to the Report. After reviewing the above, the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby **ORDERED** adopted.

The Court further **ORDERS** that the Respondent's Motion to Dismiss be **DENIED** (Document No. 9). Respondent is **ORDERED** to file an answer addressing the specific contentions raised by Petitioner Hess in his §2254 petition. Further proceedings on this action are **REFERRED** to Magistrate Judge Seibert to evaluate the substantive claims of the parties and present a report and recommendation on the disposition of this action.

The Clerk is directed to transmit true copies of this Order to the petitioner and all counsel of record herein.

**DATED** this 13<sup>th</sup> day of November 2006.

  
**W. CRAIG BROADWATER  
UNITED STATES DISTRICT JUDGE**